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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

LAUREL A. BENNETT,

Plaintiff,

v.

PRIVATE CAPITAL GROUP, LLC,

Defendant.

Civ. No. 10-1388-AA

OPINION AND ORDER

AIKEN, Chief Judge:

Plaintiff brought suit seeking a declaratory judgment that the Deed of Trust encumbering her property was not properly assigned or foreclosed, and as a result, defendant does not own the property. Plaintiff also seeks to quiet title and a declaration that she is the owner of the property.

On November 30, 2010, defendant moved to dismiss plaintiff's complaint for failure to state a claim. To date, plaintiff has not responded to defendant's motion.

Plaintiff filed her complaint in state court on October 15,

2010.¹ Plaintiff asserts allegations against several entities that were allegedly involved in the assignments of interest under the subject Deed of Trust. Plaintiff maintains that the assignment to Fidelity National Title Insurance (Fidelity) as the successor trustee was not valid and as a result Fidelity had no authority to foreclose on the Deed of Trust. Notably, plaintiff does not name Fidelity or any other trustee as a defendant in this action, even though the alleged trustee or successor trustee is a necessary party to determine the validity of a foreclosure proceeding. Or. Rev. Stat. § 86.790(4).

Aside from this deficiency, defendant moves for dismissal of plaintiff's claim on grounds that she fails to present a justiciable controversy, given that 1) plaintiff has been in default on the Deed of Trust since 2005, 2) the property was sold to defendant through public auction on July 2, 2010, and 3) plaintiff surrendered the property in a bankruptcy proceeding prior to foreclosure. See Def's Request for Judicial Notice and attached exhibits.² Plaintiff has not responded to defendant's arguments or otherwise presented argument or evidence to support her claims.

¹Defendant removed this action on the basis of diversity jurisdiction, as the value of the object of this action exceeds the jurisdictional amount. 28 U.S.C. § 1332(a).

²Regardless of whether the court takes judicial notice of these documents as "matters of public record" or considers them in the context of Federal Rule of Civil Procedure 56 instead of Rule 12(b)(6), plaintiff fails to address or rebut them. See Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001).

Accordingly, I accept defendant's assertions and find that plaintiff fails to establish that she is entitled to a declaratory judgment or quiet title in her name.

CONCLUSION

Defendant's Motion to Dismiss (doc. 5) is GRANTED.

IT IS SO ORDERED.

Dated this 10th day of March, 2011.

A handwritten signature in cursive script, appearing to read "Ann Aiken", is written over a horizontal line.

Ann Aiken
United States District Judge